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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/349,517	07/08/1999	RUSSELL W. MCDONALD	1106-1	6725

23429 7590 01/09/2006

GREGORY SMITH & ASSOCIATES  
3900 NEWPARK MALL ROAD, 3RD FLOOR  
NEWARK, CA 94560

received  
11/11/06

EXAMINER	
COLBERT, ELLA	
ART UNIT	PAPER NUMBER

3624

DATE MAILED: 01/09/2006

COPY

Please find below and/or attached an Office communication concerning this application or proceeding.



# Best Available Copy

Commissioner for Patents  
United States Patent and Trademark Office  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

DATE MAILED:

## NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 12-27-05 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☒ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☒ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

**A copy of this notice MUST be returned with any reply.**

Direct the reply and any questions about this notice to:

M. Gary, Examining Group 3624

# PATENT APPLICATION FEE DETERMINATION RECORD

Effective November 10, 1998

Application or Drawing Number

02/349517



## CLAIMS AS FILED - PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA
BASIC FEE		
TOTAL CLAIMS	5 minus 20 =	
INDEPENDENT CLAIMS	2 minus 3 =	
MULTIPLE DEPENDENT CLAIM PRESENT		

\* If the difference in column 1 is less than zero, enter "0" in column 2

## CLAIMS AS AMENDED - PART II

AMENDMENT A	(Column 1) CLAIMS REMAINING AFTER AMENDMENT	(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
	Total	49	64
Independent	2	3	1
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM			

AMENDMENT B	(Column 1) CLAIMS REMAINING AFTER AMENDMENT	(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
	Total	46	64
Independent	2	3	1
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM			

AMENDMENT C	(Column 1) CLAIMS REMAINING AFTER AMENDMENT	(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
	Total	90	64
Independent	4	3	1
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM			

\* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."

\*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3."

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

SMALL ENTITY TYPE ☒ OR OTHER THAN SMALL ENTITY

RATE	FEE	OR	RATE	FEE
	380.00			760.00
X\$ 9=			X\$18=	
X\$39=			X78=	
+130=			+260=	
TOTAL	350		TOTAL	

SMALL ENTITY OR OTHER THAN SMALL ENTITY

RATE	ADDI- TIONAL FEE	OR	RATE	ADDI- TIONAL FEE
X\$ 9=			X\$18=	
X\$39=			X78=	
+130=			+260=	
TOTAL ADDIT. FEE			TOTAL ADDIT. FEE	

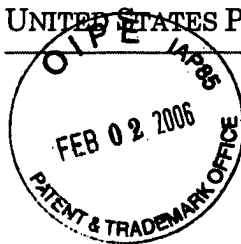
RATE	ADDI- TIONAL FEE	OR	RATE	ADDI- TIONAL FEE
X\$ 9=			X\$18=	
X\$39=			X78=	
+130=			+260=	
TOTAL ADDIT. FEE			TOTAL ADDIT. FEE	

RATE	ADDI- TIONAL FEE	OR	RATE	ADDI- TIONAL FEE
X\$ 9=	650		X\$18=	
X\$39=	100		X78=	
+130=			+260=	
TOTAL ADDIT. FEE			TOTAL ADDIT. FEE	

FORM PTO-673  
(Rev. 11/98)

Patents and Trademark Office, U.S. DEPARTMENT OF COMMERCE  
@ U.S. GPO: 1998-412-472/90201

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**NOTICE REQUIRING EXTENSION OF TIME FEE**  
***No New Time Period is Provided***

Applicant's reply to the Office Action mailed on 12/27/05 was received in the Office on \_\_\_\_\_, which is after the expiration of the period for reply set in the Office action. The time period for reply continues to run from the mailing date of the Office action. This application will become ABANDONED unless applicant obtains an extension of time by filing a petition under 37 CFR 1.136(a) accompanied by the appropriate fee as set forth in 37 CFR 1.17(a)(1)-(5) within the maximum extendable time period for reply (e.g., six months for a reply to a non-final rejection).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee due. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant reply later than the maximum period of SIX (6) MONTHS statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action.

- ☐ 1. The appropriate extension of time fee is missing.
- ☒ 2. The extension of time fee submitted is insufficient.
- ☐ 3. The funds in Deposit Account No. \_\_\_\_\_ are insufficient to cover the entire fee due. The balance is due within the time period set forth in this notice. See note below regarding the appropriate service charge.
- ☐ 4. The Credit Card payment to cover the entire fee due to Account \_\_\_\_\_ (Card type + last 4 digits ONLY) was refused. The balance is due within the time period set forth in this notice. See note below regarding the appropriate service charge.
- ☐ 5. Other. \$30.00

Explanation (Provide specific details of the required correction in order to assist the applicant. Indicate whether a service charge has been added to the fee due):  
\_\_\_\_\_

THE AMOUNT OF THE FEE(S) DUE IS SUBJECT TO CHANGE, GENERALLY ON OCTOBER 1 OF EACH YEAR (37 CFR 1.17 & 1.21). THE AMOUNT OF THE FEE(S) DUE IS DETERMINED AS OF THE DATE A COMPLETE REPLY WITH THE APPROPRIATE FEE(S) IS RECEIVED BY THE OFFICE (37 CFR 1.8 & 1.10). BECAUSE THE AMOUNT DUE IS SUBJECT TO CHANGE, IT IS RECOMMENDED THAT APPLICANT CHECK THE CURRENT FEE SCHEDULE WHICH IS AVAILABLE ON THE USPTO'S WEBSITE AT: <http://www.uspto.gov/web/offices/ac/qs/ope/fees.htm>

**Service Charges:** There is a \$50 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR 1.21(m)). There is a \$25.00 service charge for each month when the balance of a deposit account is below \$1000 at the end of the month (37 CFR 1.21(b)(2)).

(571) 272 -  
Technical Support Staff (TSS)

**Note to TSS: Please do NOT use this notice if the application is under a final rejection.**